

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

REYNOLDS CONSUMER PRODUCTS INC.,)

Plaintiff,)

v.)

HANDI-FOIL CORPORATION,)

Defendant.)

Case No.: 1:13-cv-214 LO/TRJ

**DEFENDANT HANDI-FOIL CORPORATION'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Handi-Foil Corporation (“Handi-Foil”), by its undersigned counsel and pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56, moves this Court for entry of partial summary judgment. Specifically, Handi-Foil requests that this Court enter judgment as a matter of law: (1) granting Handi-Foil’s counterclaim for cancellation of Plaintiff Reynolds Consumer Products Inc.’s (“Reynolds”) two asserted federal trademark registrations on the ground that Reynolds has abandoned the marks depicted in those registrations (Counterclaim Count 1); (2) if this Court grants Handi-Foil’s counterclaim for cancellation, denying Reynolds’ claim for infringement of registered marks (Count 1), as the registrations Reynolds asserts to support its claim will have been cancelled; and (3) denying Reynolds’ false advertising claim (Count 8) on various grounds, including that Reynolds has not proven that the majority of the accused statements are actionable advertisements or that the remaining claims are false or misleading.

First, as a matter of law, Reynolds has abandoned the trademark registrations it seeks to enforce against Handi-Foil. Because the asserted registrations are design marks, the design of

the package that Reynolds actually uses must be “*substantially exact*” as compared to the drawings that are the subject of the registrations. Reynolds, however, concedes that it has not used the package depicted in the asserted registrations for ten years and has no intention of reviving that use. As a matter of law, Reynolds has abandoned its registrations, rendering them invalid and ripe for cancellation.

Second, Reynolds’ last minute false advertising claim against Handi-Foil is based on eleven statements that Reynolds claims are false. The majority of the accused statements are not “advertisements” but rather are one-on-one communications that cannot, as a matter of law, give rise to a claim for false advertising. And for those few statements that may actually qualify as advertisement, Reynolds cannot prove that the statements are either literally false or misleading, nor can it establish that the statements are material to consumers’ purchasing decisions. Accordingly, Handi-Foil is entitled to summary judgment on Reynolds’ false advertising claim as a matter of law.

Handi-Foil’s undersigned counsel certifies that, pursuant to Local Rule 7(E), counsel has conferred in good faith with counsel for Reynolds in an effort to narrow the area of disagreement relating to the issues Handi-Foil raises in this Motion.

WHEREFORE, and for the reasons set forth in detail in the accompanying Brief, Handi-Foil respectfully requests that this Court enter summary judgment granting Handi-Foil’s counterclaim for cancellation (Counterclaim Count 1) and denying Reynolds’ claims for infringement of registered trademarks (Count 1) and false advertising (Count 8).

Dated: December 20, 2013

Respectfully Submitted,

By: /s/ Brian N. Gross

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December, 2013, pursuant to the Court's approval and the parties' agreement, I served the foregoing document via e-mail to the following:

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